



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2004

Ms. Clara Ward Flores  
County Auditor  
Nacogdoches County  
101 West Main, Suite 110  
Nacogdoches, Texas 75961

OR2004-4372

Dear Ms. Flores:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202314.

The County of Nacogdoches (the "county") received a request for proposals and scoresheets relating to a county courthouse renovation project. The county does not take a position with regard to the release of the requested information, but it does indicate that this information may be subject to third-party claims of confidentiality. You state, and provide documentation showing, that you have notified the following interested third parties of the county's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released to the requestor: Harrison, Walker & Harper, LP ("Harrison"); J.E. Kingham Construction Co. ("Kingham"); and MDI Inc. General Contractors ("MDI"). *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). MDI has responded to the notice and argues that its information is excepted under section 552.110 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Harrison and Kingham have not submitted comments to this office in response to the section 552.305 notice; therefore, we have no basis to conclude that the information of these third parties is excepted from disclosure. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent

disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). The county must therefore release to the requestor the proposals of Harrison and Kingham and all the scoresheets evaluating those proposals.

MDI asserts that its submitted proposal is excepted from disclosure under section 552.110. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). After reviewing MDI’s arguments and the submitted information, we conclude MDI has demonstrated that release of its pricing information and customer lists, which we have marked, would result in substantial competitive harm to it for purposes of section 552.110(b); however, we conclude that MDI has not established with specific factual evidence that release of the remaining information would result in substantial competitive harm. Therefore, only the marked information is excepted from release. The remaining information is not excepted from disclosure, and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records


will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 212314

Enc. Submitted documents

c: Ms. Sandra J. Cox  
Cox Contractors, Inc.  
P.O. Box 631447  
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(w/o enclosures)

Mr. Hunter Moore  
Harrison, Walker & Harper, L.P.  
222 East Hickory Street  
Paris, Texas 75460-2698  
(w/o enclosures)

Mr. James A. Kingham  
J.E. Kingham Construction Co.  
P.O. Box 630632  
Nacogdoches, Texas 75963-0632  
(w/o enclosures)

Mr. Frank Pieschel  
MDI Inc. General Contractors  
322 West Second Street  
Irving, Texas 75060  
(w/ enclosure)